

FEDERAL ELECTION COMMISSION
999 E Street, NW
Washington, DC 20463

FIRST GENERAL COUNSEL'S REPORT

RR 12L-07

DATE RECEIVED: February 27, 2012

DATE ACTIVATED: April 12, 2012

EARLIEST SOL: July 29, 2015

LATEST SOL: May 11, 2016

SOURCE:

Internally Generated

RESPONDENT:

Schiff for Senate and Andrew Schiff, in his
official capacity as treasurer

RELEVANT STATUTES:

2 U.S.C. § 434(b)

11 C.F.R. § 104.3

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Schiff for Senate and Andrew Schiff in his official capacity as treasurer ("Respondent" or "Committee") to the Office of the General Counsel ("OGC") for failing to disclose a total of \$22,458.84 in receipts and \$242,854.07 in disbursements in its original 2010 12 Day Pre-Primary, 2010 October Quarterly, and 2010 Year End Reports. In response to the referral, the Committee acknowledged the reporting errors, explaining that \$135,000 of the unreported disbursements resulted from a single typographical error in which the omission of a single digit resulted in a \$150,000 disbursement being listed as a \$15,000 disbursement on one of its disclosure reports.

We recommend that the Commission open a MUR in connection with RR 12L-07 and find reason to believe that the Committee violated 2 U.S.C. § 434(b) by failing to accurately

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1 disclose receipts and disbursements in reports to the Commission. Based on the underlying
2 circumstances, we recommend that the
3 findings not include the \$135,000 attributable to the Committee's since-corrected typographical
4 error. Additionally, we recommend that the Commission enter into pre-probable cause
5 conciliation with the Committee

6 **II. FACTUAL AND LEGAL ANALYSIS**

7 **A. Factual Background**

8 Peter Schiff was a candidate seeking the Republican nomination for U.S. Senate in the
9 August 10, 2010, Connecticut primary election. His designated principal campaign committee is
10 Schiff for Senate. Andrew Schiff is the Committee's treasurer. The Committee filed its
11 Statement of Organization on October 8, 2009, and has filed regular disclosure reports since that
12 date.¹

13 The Committee timely filed its 2010 12 Day Pre-Primary and October Quarterly Reports,
14 and filed its 2010 Year End Report on May 11, 2011.² On August 12, 2011, the Committee filed
15 amendments to each of these reports disclosing additional activity not included in the original
16 reports, as reflected in the chart below.

¹ Peter Schiff lost the primary election and the Committee's Assistant Treasurer told RAD that it would like to terminate. See Referral at 2.

² The Committee was involved in an Administrative Fine matter (AF 2459) in connection with failing to timely file its 2010 Year End Report. AF 2459 is now closed.

Report	Date of Amendment	Amount of Increased Receipts	Amount of Increased Disbursements	Total Increased Activity
2010 Pre-Primary	August 12, 2011	\$1,132.26	N/A	\$1,132.26
2010 October Quarterly	August 12, 2011	\$6,586.97	\$242,854.07	\$249,441.04
2010 Year End	August 12, 2011	\$14,739.61	N/A	\$14,739.61
	TOTAL	\$22,458.84	\$242,854.07	\$265,312.91

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2 In the cover letter submitted by the Committee with the amendments, it states:

3 "the committee had utilized the expertise of the firm, Huckaby, Davis, and
4 Lisker, until just after the primary election. After the primary election loss,
5 the committee was looking for ways to reduce costs and turned the reporting
6 duties over to a campaign staffer. Unfortunately, that individual did not have
7 the accounting and compliance skills necessary to properly file the FEC
8 Disclosure Reports. Recently the committee found an individual who was able
9 to prepare amended FEC Reports and tie the cash balances to the bank
10 reconciliations."

11 See Letter from Andrew Schiff, Treasurer, Schiff for Senate, to Robin Kelly, Senior Reports
12 Analyst, Federal Election Commission (Aug. 10, 2011) (on file at www.fec.gov).

13 On October 6, 2011, RAD sent the Committee a Request for Additional Information
14 ("RFAI") regarding the increased activity on its 2010 October Quarterly Report. Letter from
15 Robin Kelly, Senior Campaign Finance Analyst, Federal Election Commission, to Andrew
16 Schiff, Treasurer, Schiff for Senate (Oct. 6, 2011) (on file at www.fec.gov). The RFAI noted
17 that the amended reports disclosed a substantial increase in the amount of receipts and
18 disbursements from those disclosed in the original reports, and requested that the Committee
19 either amend the reports or provide an explanation to clarify why the additional activity was not
20 provided in the original reports. *Id.*

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1 In response to the RFAI, the Committee filed a Miscellaneous Document (Form 99)
2 reiterating the statement excerpted above from its August 12, 2011 cover letter and further
3 stating that, "the increased activity was the result of having the reports prepared by someone with
4 knowledge of accounting and FEC Report compliance." Form 99 filed Nov. 17, 2011.

5 On December 28, 2011, RAD sent the Committee an RFAI regarding the increased
6 activity on its 2010 12 Day Pre-Primary and Year End Reports. See Letter from Robin Kelly,
7 Senior Campaign Finance Analyst, Federal Election Commission, to Andrew Schiff, Treasurer,
8 Schiff for Senate (Dec. 28, 2011) (on file at www.fec.gov). The Committee did not submit a
9 written response, but called the RAD Analyst to state that it had already submitted a letter
10 explaining the increased activity. See Referral at 3-4.

11 RAD referred the Committee to OGC for failing to disclose \$22,458.84 in receipts and
12 \$242,854.07 in disbursements on its original 2010 12 Day Pre-Primary, October Quarterly, and
13 Year End Reports. See Memorandum from Patricia Carmona, Chief Compliance Officer,
14 Federal Election Commission, to Anthony Herman, General Counsel, Federal Election
15 Commission (Feb. 24, 2012) (hereinafter, "Referral").

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2 On March 5, 2011, this Office notified the Respondent of the Referral in accordance with
3 the Commission's policy regarding notification in non-complaint generated matters. *See* 74 Fed.
4 Reg. 38,617 (Aug. 4, 2009). In its response, the Committee reiterated that the errors resulted
5 from an inexperienced staffer taking over the disclosure duties in an effort to save money during
6 the winding down process. *See Memorandum from Scott Mackenzie, Assistant Treasurer, Schiff*
7 *for Senate, to the Office of the General Counsel, Federal Election Commission (April 2, 2012)*
8 *(hereinafter, "Response")*.

9 Because the Committee had a first-time treasurer and a first-time candidate, it retained a
10 private firm to file its disclosure reports. *Id.* When the candidate lost the primary election, the
11 campaign promptly began winding down. Anticipating fewer receipts and disbursements, and
12 trying to save money, the campaign allowed a staffer to take over the disclosure reports. *Id.*

13 In the summer of 2010, the staffer brought it to the attention of the treasurer that there
14 were several problems with the Committee's recent reports, at which point the treasurer hired
15 another firm to amend the reports and respond to the RFAs. *Id.* The Committee also explains,
16 for the first time, that a large portion (\$135,000) of the increased disbursements on its 2010
17 October Quarterly Report were the result of a missing zero; while the original report disclosed a
18 \$15,000 disbursement to Gateway Media on July 30, 2010, the actual disbursement was
19 \$150,000. *Id.* Respondent argues that, due to the nature of this error, the Commission should
20 not include this \$135,000 discrepancy in its civil penalty calculation. *Id.*

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B. Legal Analysis

The Federal Election Campaign Act of 1971, as amended (the "Act"), requires committee treasurers to file reports of receipts and disbursements in accordance with the provisions of 2 U.S.C. § 434. See 2 U.S.C. § 434(a)(1) and 11 C.F.R. § 104.1(a). These reports must include, *inter alia*, the total amount of receipts and disbursements. See 2 U.S.C. § 434(b); 11 C.F.R. § 104.3. Committees are also required to disclose itemized breakdowns of receipts and disbursements and disclose the name and address of each person who has made any contribution or received any disbursement in an aggregate amount or value in excess of \$200 within the calendar year, together with the date and amount of any such contribution or disbursement. See 2 U.S.C. § 434(b)(2)-(6); 11 C.F.R. § 104.3(a)(3)-(4) and (b)(2), (4).

The Committee did not comply with the Act's reporting requirements when it failed to disclose \$22,458.84 in receipts and \$242,854.07 in disbursements on its original reports filed with the Commission. The Committee failed to disclose \$1,132.26 in receipts on its original 2010 12 Day Pre-Primary Report, \$6,586.97 in receipts and \$242,854.07 in disbursements on its original 2010 October Quarterly Report, and \$14,739.61 in receipts on its original 2010 Year End Report. Therefore, we recommend the Commission find reason to believe that the Committee violated 2 U.S.C. § 434(b).

We do not recommend, however, counting the \$135,000 typographical error as part of the amount in violation.

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Accordingly, we recommend that the Commission exclude from the amount in violation the \$135,000 discrepancy resulting from the typographical error in the 2010 October Quarterly Report.

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9 **IV. RECOMMENDATIONS**

10 1. Open a MUR in RR 12L-07.

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12 2. Find reason to believe that Schiff for Senate and Andrew Schiff, in his official
13 capacity as treasurer, violated 2 U.S.C. § 434(b).

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15 3. Approve the attached Factual & Legal Analysis.
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4. Enter into conciliation with Schiff for Senate and Andrew Schiff, in his official capacity as treasurer, prior to a finding of probable cause to believe.
- 5.
6. Approve the appropriate letter.

Anthony Herman
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6-11-12
Date

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